

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date: 19-07-1995.

SPECIAL CIVIL APPLICATION NO. 3895 OF 1995

AND

SPECIAL CIVIL APPLICATION NO. 3896 OF 1995

For Approval and Signature

THE HON'BLE MR. JUSTICE

C.K.THAKKER

AND

THE HON'BLE MR. JUSTICE

RAJESH BALIA

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

In Special Civil Application No. 3895 of 1995:-

Rajath Leasing & Finance Ltd.

Rajkot.Petitioner

Versus

Assistant Commissioner of Income Tax

Rajkot.Respondent.

In Special Civil Application No. 3896 of 1995:-

Rajath Leasing & Finance Ltd.

Rajkot.Petitioner

Versus

Assistant Commissioner of Income Tax
Rajkot.Respondent

Mr.J.P.Shah, Advocate for the petitioner in both the petitions.

Mr.B.J.Shelat, Advocate for M/s R.P.Bhatt & Co. for respondents in both the petitions

CORAM;C.K.THAKKER & RAJESH BALIA. JJ.

Date: 19-07-1995.

ORAL JUDGMENT:- (Per Thakker,J.)

Rule. Mr. B.J.Shelat, learned advocate for M/s. R.P.Bhatt & Co. waives the service of Rule on behalf of the respondents. On the facts and in circumstances of the case, both these petitions have been taken for final hearing today.

2. Both these petitions are filed against the Notices of Reassessment for the years 1986-87 as 1987-88 issued on January 11, 1995 under Sec.148 of the Income Tax Act, 1961 (hereinafter referred to as the Act). By the impugned notices, the petitioner was informed that the Assistant Commissioner of Income Tax, Circle Rajkot(respondent herein) has reason to believe that the income chargeable to tax for the assessment year 1986-87 as well as 1987-88 escaped assessment within the meaning of Section 147 of the Act. Hence, the respondent proposed to reassess the income for those two assessment years. The petitioner was, therefore, called upon to show cause as to why the proceedings should not be initiated against him and the income should not be made taxable. The petitioner has challenged the legality of those notices by filing these petitions.

3. This court issued notice on June 22, 1995 by making it returnable on July 3, 1995. Ad-interim relief was also granted. Mr.B.J.Shelat, learned counsel for the respondent placed on record so called reasons recorded by the respondent for re-opening of the proceedings. The said order reads as under:-

" M/s. Rajesh Leasing & Finance Limited,

Rajkot. A.Y. 87-88.

The assessee is a leasing company, doing leasing of Industrial Equipments, Assessment on 24-3-93, and depreciation was allowed to the extent of Rs.15,29,350. The Revenue Audit Party has raised audit objection that the assessee company being lessor is not entitled for depreciation on the plant & machinery.

The C.I.T., Rajkot, vide his letter No.CIT.R/Jud./Aud/68/RA (6)/94-95 dated, 10-1-1995 has approved action u/s.147 of the I.T.Act, 1961 as most appropriate remedial action in this case.

I have, therefore, reason to believe that an amount of Rs.15,29,350, being depreciation allowed, has escaped assessment for A.Y. 87-88.

Notice Issue u/s. 148."

Mr.J.P.Shah, learned counsel appearing for the petitioner strenuously urged that the show cause notices issued by respondent are without jurisdiction and are required to be quashed. He submitted that the petitioner had made full and true disclosure of all the material facts. In fact, the petitioner filed return for the assessment year 1986-87 as early as on June 30, 1986. Likewise, he submitted returns for the year 1987-88 on June 29, 1988. Assessment orders in accordance with law were passed on January 20, 1989. Notice issued under Sec. 263 of the said Act by the Commissioner of Income Tax was also replied by the petitioner on February 1, 1991 and the order was passed on February 28, 1991. Fresh assessment order was passed on March 24, 1993 and depreciation was granted. The Assessing Officer rectified the assessment in accordance with Sec. 143(3) of the Act by passing order under Sec.154 of the Act and depreciation to the extent of 30% was allowed. Thereafter, the present notices issued. Mr.Shah also submitted that the petitioner filed a reply and contended that there was no failure on his part in making full and true disclosure of all the relevant and material facts and notices could not have been issued because of change of opinion. Mr Shah also contended that from bare reading of the so called reasons recorded by the respondent, it is clearly proved that he has not applied his mind at all and that he has formed his opinion on the basis of the audit report and is also acting under

dictation.

5. In our opinion,, the submission of Mr.Shah is well founded and the petitions are required to be allowed. From the order, it becomes clear that it is not even the case of the respondent that there was no true and full disclosure of all material facts by the petitioner and on that ground, the proceedings were required to be reopened. On the contrary, looking to the reasons, it becomes amply clear that the Revenue Audit Party had raised audit objection that the assessing company being lessor-company was not entitled for depreciation on the plant and machinery that the proceedings were sought to be reopened. Similarly it is also apparent from the reasons that CIT, Rajkot had approved the action of re-opening of proceedings, and therefore, the respondent had reason to reopen the proceedings.

6. Thus, it is not that material facts have been suppressed by the petitioner and on that ground, notices of reopening the proceedings were issued but it was because the Revenue Audit Party had raised some objection that such notices were issued. No notices under Sec.148 of the Act can be issued on the basis of Audit report and hence, they cannot be held to be legal and valid.Mr. Shah appears to be right in submitting that had the Revenue Audit Party not raised an objection, in all probability, notices would not have been issued to the petitioner. Be that it may. Since there is no ground and/or reason that there was suppression of material facts by the petitioner for which reopening of the proceedings were felt necessary, issuance of notices under Sec.148 of the Act was contrary to law. There was no satisfaction on the part of the competent authority which is reflected in reasons that he had reason to believe that such reopening of proceedings was necessary.

7. Mr. Shah is also right in contending that the respondent was acting under dictation. This is clearly proved from the reasons recorded by the respondent wherein it was stated that, CIT, Rajkot had approved the action of reopening of proceedings. In fact, notices were issued on the basis of audit report and CIT's approval without there being satisfaction and application of mind on the part of the respondent. Such action cannot be upheld by a court of law and the notices must be quashed by allowing the petitions.

8. For the aforesaid reasons, both the petitions are required to be allowed and they are accordingly allowed.

Rule is made absolute. Notice dt. January 11 1995
Annexzure I are hereby quashed and set aside. On the
facts and in the circumstances of the case, there is no
order as to costs.

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